



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK CLARK, and known as :
"Renee Forde," :

Plaintiff, :

-against- :

OFFICER HANSON and :
OFFICER HARRIS, Shield # 17128, :

Defendants. :

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08 Civ. 1518 (RMB) (HBP)

REPORT AND
RECOMMENDATION

PITMAN, United States Magistrate Judge:

TO THE HONORABLE RICHARD M. BERMAN, United States
District Judge:

Plaintiff commenced this action on approximately
February 14, 2008 alleging, in substance, that he was the victim
of an unjustified assault in November 2007 while he was in the
custody of the New York City Department of Corrections.
Plaintiff subsequently commenced another action against the same
defendants arising out of the same alleged incident; that second
action has been assigned Docket Number 08 Civ. 3594. None of the
defendants has appeared in this matter, and there is no proof of
service as to any of the defendants in the Court's files. One of
the defendants has appeared in Docket Number 08 Civ. 3594.

I held a conference call in this matter today with
plaintiff and counsel for the one defendant who has appeared in

Docket Number 08 Civ. 3594. I asked plaintiff why he commenced two actions apparently based on the same event, and he admitted that the second action had been commenced as the result of mistake. Since the two actions were duplicative, I asked him if he had any objection to this matter being dismissed without prejudice to the claims asserted in Docket Number 08 Civ. 3594, and he advised that he did not.¹

Accordingly, because this action is duplicative of 08 Civ. 3594, and with the consent of plaintiff, I respectfully recommend that this matter be dismissed without prejudice to the claims asserted in 08 Civ. 3594.

OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed.R.Civ.P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Richard M. Berman, United States District Judge, 500 Pearl Street, Room 650, New York, New York 10007, and to the

¹One of the defendants has already answered 08 Civ. 3594; none of the defendants has answered or appeared in 08 Civ. 1518. Because the former action is slightly more advanced than the latter action, I submit that it makes more sense to dismiss the latter action as duplicative even though it is earlier filed.

chambers of the undersigned, 500 Pearl Street, Room 750, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Berman. FAILURE TO OBJECT WITHIN TEN (10) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
November 25, 2008

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copies mailed to:

Mr. Renee Forde
No. A097538379
South Texas Detention Center
P.O. Box 1228
Pearsall, Texas 78061

Brian Francolla, Esq.
Assistant Corporation Counsel
City of New York
100 Church Street
New York, New York 10007